IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.313 of 2007
In
Notice of Motion No.126 of 2006
In
Chamber Summons No.68 of 2006
In
Pauper Petition No.5 of 2003

Rameshchandra Shivnarayan Porwal
& Another. .. Appellants

Vs.

The State of Maharashtra .. Respondent
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Shri G.V.Pandya for the appellants.

None for the respondents.
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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 4TH JUNE, 2007

P.C.

1. Heard the learned advocate for the appellants. This appeal arises from the order dated 11th January, 2007 passed in Notice of Motion No.126 of 2006 in Pauper Petition No.5 of 2003. By the impugned order, the notice of motion has been disposed of rejecting the notice of motion taken out by the appellants for restoration of the Chamber Summons No.68 of 2006 which was dismissed for default by the order dated 19th

April, 2006. The impugned order has been passed on two grounds. Firstly, that no sufficient cause was shown for absence of the party and the advocate when the matter was called out and dismissed for default on 19th April, 2006 and secondly that one Shri Vijay Porwal, one of the legal representatives of the deceased and who was necessary party, was not joined as the party to the chamber summons.

2. As regards the failure on the part of the party and the advocate to appear before the court when the matter was called out and dismissed for default, the learned advocate appearing for the appellants submitted that at the relevant time the advocate was held up in different court and when he approached the learned Single Judge on the very day for restoration of the chamber summons, he was asked to take out necessary application for restoration of the chamber summons and that is how the Notice of Motion No.126 of 2006 was taken out. The impugned order discloses that the notice of motion did not disclose any justification for absence of the advocate at the time when the matter was called out and dismissed for default, and though it was alleged that the learned advocate was held up before the Division Bench at the relevant time, nothing was produced on record before

the learned Single Judge to show that he had matters before the Division Bench. The learned advocate for the appellants was also not able to point out any such material having been placed on record along with the appeal to the effect that the advocate was busy on the relevant day and time before the Division Bench and that therefore, he could not appear before the learned Single Judge in the said chamber summons. It is also pertinent to note that it is an undisputed fact that Shri Vijay Porwal was allowed to contest the proceedings and the order to that effect was passed by the Additional Prothonotary and Senior Master on 23rd September, 2005 and the said order has attained finality in the absence of any challenge thereto. Being so, Vijay Porwal is necessary party to all the proceedings in the matter arising subsequent to the order dated 23rd September, 2005. It is sought to be contended that there is no specific order directing Vijay Porwal to join as the party to the said proceedings. The very fact that Vijay Porwal was allowed to contest the proceedings goes to show that he was necessary party to the proceedings and despite the said fact the appellants have failed to join Vijay Porwal as the party to the said proceedings. The appellants cannot claim benefit of their own lapse in the matter or on account of their own failure to do

the needful things in the proceedings. Being so, merely because the order dated 23rd September, 2005 did not specifically disclose the need of joining Vijay Porwal as the party to the proceedings, needless to say that though Vijay Porwal was allowed to contest the proceedings as he was necessary party thereto, the steps were not taken by the appellants themselves to join Vijay Porwal as the party to the proceedings. On failure in that regard and on that count the learned Single Judge having disposed of the notice of motion, we find no case is made out for interference in the impugned order.

3. In the result, therefore, neither there is sufficient cause shown for the absence of the advocate at the relevant time when the matter was called out and dismissed for default, nor proper steps were taken for joining Vijay Porwal in the matter who is a necessary party. On these grounds, we do not find any justification for interference in the impugned order and hence the appeal fails and is hereby dismissed.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)